

110TH CONGRESS  
1ST SESSION

# H. R. 3686

To prohibit employment discrimination based on gender identity.

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## IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 27, 2007

Mr. FRANK of Massachusetts (for himself, Mr. SHAYS, Mr. ANDREWS, and Mr. GEORGE MILLER of California) introduced the following bill; which was referred to the Committee on Education and Labor, and in addition to the Committees on House Administration, Oversight and Government Reform, and the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To prohibit employment discrimination based on gender identity.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. PURPOSES.**

4       The purposes of this Act are—

5               (1) to provide a comprehensive Federal prohibi-  
6       tion of employment discrimination on the basis of  
7       gender identity;

1           (2) to provide meaningful and effective remedies for employment discrimination on the basis of  
2           gender identity; and

3           (3) to invoke congressional powers, including  
4           the powers to enforce the 14th amendment to the  
5           Constitution, and to regulate interstate commerce  
6           and provide for the general welfare pursuant to section 8 of article I of the Constitution, in order to  
7           prohibit employment discrimination on the basis of  
8           gender identity.

9  
10  
11 **SEC. 2. DEFINITIONS.**

12       (a) IN GENERAL.—In this Act:

13           (1) COMMISSION.—The term “Commission”  
14           means the Equal Employment Opportunity Commission.  
15

16           (2) COVERED ENTITY.—The term “covered entity” means an employer, employment agency, labor  
17           organization, or joint labor-management committee.

18  
19           (3) EMPLOYEE.—

20           (A) IN GENERAL.—the term “employee”  
21           means—

22                   (i) an employee as defined in section  
23                   701(f) of the Civil Rights Act of 1964 (42  
24                   U.S.C. 2000e(f);

1 (ii) a Presidential appointee or State  
2 employee to which section 302(a)(1) of the  
3 Government Employee Rights Act of 1991  
4 (42 U.S.C. 2000e–16(a)(1)) applies;

5 (iii) a covered employee, as defined in  
6 section 101 of the Congressional Account-  
7 ability Act of 1995 (2 U.S.C. 1301) or sec-  
8 tion 411(c) of title 3, United States Code;  
9 or

10 (iv) an employee or applicant to which  
11 section 717(a) of the Civil Rights Act of  
12 1964 (42 U.S.C. 2000e–16(a)) applies.

13 (B) EXCEPTION.—The provisions of this  
14 Act that apply to an employee or individual  
15 shall not apply to a volunteer who receives no  
16 compensation.

17 (4) EMPLOYER.—The term “employer”  
18 means—

19 (A) a person engaged in an industry affect-  
20 ing commerce (as defined in section 701(h) of  
21 the Civil Rights Act of 1964 (42 U.S.C.  
22 2000e(h)) who has 15 or more employees (as  
23 defined in subparagraphs (A)(i) and (B) of  
24 paragraph (3)) for each working day in each of  
25 20 or more calendar weeks in the current or

1 preceding calendar year, and any agent of such  
2 a person, but does not include a bona fide pri-  
3 vate membership club (other than a labor orga-  
4 nization) that is exempt from taxation under  
5 section 501(c) of the Internal Revenue Code of  
6 1986;

7 (B) an employing authority to which sec-  
8 tion 302(a)(1) of the Government Employee  
9 Rights Act of 1991 applies;

10 (C) an employing office, as defined in sec-  
11 tion 101 of the Congressional Accountability  
12 Act of 1995 or section 411(c) of title 3, United  
13 States Code; or

14 (D) an entity to which section 717(a) of  
15 the Civil Rights Act of 1964 applies.

16 (5) EMPLOYMENT AGENCY.—The term “em-  
17 ployment agency” has the meaning given the term in  
18 section 701(c) of the Civil Rights Act of 1964 (42  
19 U.S.C. 2000e(c)).

20 (6) GENDER IDENTITY.—The term “gender  
21 identity” means the gender-related identity, appear-  
22 ance, or mannerisms or other gender-related charac-  
23 teristics of an individual, with or without regard to  
24 the individual’s designated sex at birth.

1           (7) LABOR ORGANIZATION.—The term “labor  
2           organization” has the meaning given the term in  
3           section 701(d) of the Civil Rights Act of 1964 (42  
4           U.S.C. 2000e(d)).

5           (8) PERSON.—The term “person” has the  
6           meaning given the term in section 701(a) of the  
7           Civil Rights Act of 1964 (42 U.S.C. 2000e(a)).

8           (9) RELIGIOUS ORGANIZATION.—The term “re-  
9           ligious organization” means—

10                   (A) a religious corporation, association, or  
11                   society; or

12                   (B) a school, college, university, or other  
13                   educational institution or institution of learn-  
14                   ing, if—

15                           (i) the institution is in whole or sub-  
16                           stantial part controlled, managed, owned,  
17                           or supported by a particular religion, reli-  
18                           gious corporation, association, or society;  
19                           or

20                           (ii) the curriculum of the institution is  
21                           directed toward the propagation of a par-  
22                           ticular religion.

23           (10) STATE.—The term “State” has the mean-  
24           ing given the term in section 701(i) of the Civil  
25           Rights Act of 1964 (42 U.S.C. 2000e(i)).

1 (b) APPLICATION OF DEFINITIONS.—For purposes of  
2 this section, a reference in section 701 of the Civil Rights  
3 Act of 1964—

4 (1) to an employee or an employer shall be con-  
5 sidered to refer to an employee (as defined in para-  
6 graph (3)) or an employer (as defined in paragraph  
7 (4)), respectively, except as provided in paragraph  
8 (2) below; and

9 (2) to an employer in subsection (f) of that sec-  
10 tion shall be considered to refer to an employer (as  
11 defined in paragraph (4)(A)).

12 **SEC. 3. EMPLOYMENT DISCRIMINATION PROHIBITED.**

13 (a) EMPLOYER PRACTICES.—It shall be an unlawful  
14 employment practice for an employer—

15 (1) to fail or refuse to hire or to discharge any  
16 individual, or otherwise discriminate against any in-  
17 dividual with respect to the compensation, terms,  
18 conditions, or privileges of employment of the indi-  
19 vidual, because of such individual's actual or per-  
20 ceived gender identity; or

21 (2) to limit, segregate, or classify the employees  
22 or applicants for employment of the employer in any  
23 way that would deprive or tend to deprive any indi-  
24 vidual of employment or otherwise adversely affect  
25 the status of the individual as an employee, because

1 of such individual's actual or perceived gender iden-  
2 tity.

3 (b) EMPLOYMENT AGENCY PRACTICES.—It shall be  
4 an unlawful employment practice for an employment agen-  
5 cy to fail or refuse to refer for employment, or otherwise  
6 to discriminate against, any individual because of the ac-  
7 tual or perceived gender identity of the individual or to  
8 classify or refer for employment any individual on the  
9 basis of the actual or perceived gender identity of the indi-  
10 vidual.

11 (c) LABOR ORGANIZATION PRACTICES.—It shall be  
12 an unlawful employment practice for a labor organiza-  
13 tion—

14 (1) to exclude or to expel from its membership,  
15 or otherwise to discriminate against, any individual  
16 because of the actual or perceived gender identity of  
17 the individual;

18 (2) to limit, segregate, or classify its member-  
19 ship or applicants for membership, or to classify or  
20 fail or refuse to refer for employment any individual,  
21 in any way that would deprive or tend to deprive any  
22 individual of employment, or would limit such em-  
23 ployment or otherwise adversely affect the status of  
24 the individual as an employee or as an applicant for

1 employment because of such individual's actual or  
2 perceived gender identity; or

3 (3) to cause or attempt to cause an employer to  
4 discriminate against an individual in violation of this  
5 section.

6 (d) TRAINING PROGRAMS.—It shall be an unlawful  
7 employment practice for any employer, labor organization,  
8 or joint labor-management committee controlling appren-  
9 ticeship or other training or retraining, including on-the-  
10 job training programs, to discriminate against any indi-  
11 vidual because of the actual or perceived gender identity  
12 of the individual in admission to, or employment in, any  
13 program established to provide apprenticeship or other  
14 training.

15 (e) ASSOCIATION.—An unlawful employment practice  
16 described in any of subsections (a) through (d) shall be  
17 considered to include an action described in that sub-  
18 section, taken against an individual based on the actual  
19 or perceived gender identity of a person with whom the  
20 individual associates or has associated.

21 (f) NO PREFERENTIAL TREATMENT OR QUOTAS.—  
22 Nothing in this Act shall be construed or interpreted to  
23 require or permit—

24 (1) any covered entity to grant preferential  
25 treatment to any individual or to any group because



1 of the actual or perceived gender identity of such in-  
2 dividual or group on account of an imbalance which  
3 may exist with respect to the total number or per-  
4 centage of persons of any actual or perceived gender  
5 identity employed by any employer, referred or clas-  
6 sified for employment by any employment agency or  
7 labor organization, admitted to membership or clas-  
8 sified by any labor organization, or admitted to, or  
9 employed in, any apprenticeship or other training  
10 program, in comparison with the total number or  
11 percentage of persons of such actual or perceived  
12 gender identity in any community, State, section, or  
13 other area, or in the available work force in any  
14 community, State, section, or other area; or

15 (2) the adoption or implementation by a cov-  
16 ered entity of a quota on the basis of actual or per-  
17 ceived gender identity.

18 (g) DISPARATE IMPACT.—Only disparate treatment  
19 claims may be brought under this Act.

20 **SEC. 4. RETALIATION PROHIBITED.**

21 It shall be an unlawful employment practice for a cov-  
22 ered entity to discriminate against an individual because  
23 such individual (1) opposed any practice made an unlawful  
24 employment practice by this Act; or (2) made a charge,

1 testified, assisted, or participated in any manner in an in-  
2 vestigation, proceeding, or hearing under this Act.

3 **SEC. 5. EXEMPTION FOR RELIGIOUS ORGANIZATIONS.**

4 This Act shall not apply to a religious organization.

5 **SEC. 6. NONAPPLICATION TO MEMBERS OF THE ARMED**  
6 **FORCES; VETERANS' PREFERENCES.**

7 (a) ARMED FORCES.—

8 (1) EMPLOYMENT.—In this Act, the term “em-  
9 ployment” does not apply to the relationship be-  
10 tween the United States and members of the Armed  
11 Forces.

12 (2) ARMED FORCES.—In paragraph (1) the  
13 term “Armed Forces” means the Army, Navy, Air  
14 Force, Marine Corps, and Coast Guard.

15 (b) VETERANS' PREFERENCES.—This title does not  
16 repeal or modify any Federal, State, territorial, or local  
17 law creating a special right or preference concerning em-  
18 ployment for a veteran.

19 **SEC. 7. CONSTRUCTION.**

20 (a) EMPLOYER RULES AND POLICIES.—

21 (1) IN GENERAL.—Nothing in this Act shall be  
22 construed to prohibit a covered entity from enforcing  
23 rules and policies that do not intentionally cir-  
24 cumvent the purposes of this Act, if the rules or  
25 policies are designed for, and uniformly applied to,

1 all individuals regardless of actual or perceived gen-  
2 der identity.

3 (2) SEXUAL HARASSMENT.—Nothing in this  
4 Act shall be construed to limit a covered entity from  
5 taking adverse action against an individual because  
6 of a charge of sexual harassment against that indi-  
7 vidual, provided that rules and policies on sexual  
8 harassment, including when adverse action is taken,  
9 are designed for, and uniformly applied to, all indi-  
10 viduals regardless of actual or perceived gender iden-  
11 tity.

12 (3) CERTAIN SHARED FACILITIES.—Nothing in  
13 this Act shall be construed to establish an unlawful  
14 employment practice based on actual or perceived  
15 gender identity due to the denial of access to shared  
16 shower or dressing facilities in which being seen  
17 unclothed is unavoidable, provided that the employer  
18 provides reasonable access to adequate facilities that  
19 are not inconsistent with the employee's gender iden-  
20 tity as established with the employer at the time of  
21 employment or upon notification to the employer  
22 that the employee has undergone or is undergoing  
23 gender transition, whichever is later.

1 (4) ADDITIONAL FACILITIES NOT REQUIRED.—

2 Nothing in this Act shall be construed to require the  
3 construction of new or additional facilities.

4 (5) DRESS AND GROOMING STANDARDS.—Noth-

5 ing in this Act shall prohibit an employer from re-  
6 quiring an employee, during the employee's hours at  
7 work, to adhere to reasonable dress or grooming  
8 standards not prohibited by other provisions of Fed-  
9 eral, State, or local law, provided that the employer  
10 permits any employee who has undergone gender  
11 transition prior to the time of employment, and any  
12 employee who has notified the employer that the em-  
13 ployee has undergone or is undergoing gender tran-  
14 sition after the time of employment, to adhere to the  
15 same dress or grooming standards for the gender to  
16 which the employee has transitioned or is  
17 transitioning.

18 **SEC. 8. COLLECTION OF STATISTICS PROHIBITED.**

19 The Commission shall not collect statistics on actual  
20 or perceived gender identity from covered entities, or com-  
21 pel the collection of such statistics by covered entities.

22 **SEC. 9. ENFORCEMENT.**

23 (a) ENFORCEMENT POWERS.—With respect to the  
24 administration and enforcement of this Act in the case of

1 a claim alleged by an individual for a violation of this  
2 Act—

3 (1) the Commission shall have the same powers  
4 as the Commission has to administer and enforce—

5 (A) title VII of the Civil Rights Act of  
6 1964 (42 U.S.C. 2000e et seq.); or

7 (B) sections 302 and 304 of the Govern-  
8 ment Employee Rights Act of 1991 (42 U.S.C.  
9 2000e–16b and 2000e–16c),

10 in the case of a claim alleged by such individual for  
11 a violation of such title, or of section 302(a)(1) of  
12 the Government Employee Rights Act of 1991 (42  
13 U.S.C. 2000e–16b(a)(1)), respectively;

14 (2) the Librarian of Congress shall have the  
15 same powers as the Librarian of Congress has to ad-  
16 minister and enforce title VII of the Civil Rights Act  
17 of 1964 (42 U.S.C. 2000e et seq.) in the case of a  
18 claim alleged by such individual for a violation of  
19 such title;

20 (3) the Board (as defined in section 101 of the  
21 Congressional Accountability Act of 1995 (2 U.S.C.  
22 1301)) shall have the same powers as the Board has  
23 to administer and enforce the Congressional Ac-  
24 countability Act of 1995 (2 U.S.C. 1301 et seq.) in  
25 the case of a claim alleged by such individual for a

1 violation of section 201(a)(1) of such Act (2 U.S.C.  
2 1311(a)(1));

3 (4) the Attorney General shall have the same  
4 powers as the Attorney General has to administer  
5 and enforce—

6 (A) title VII of the Civil Rights Act of  
7 1964 (42 U.S.C. 2000e et seq.); or

8 (B) sections 302 and 304 of the Govern-  
9 ment Employee Rights Act of 1991 (42 U.S.C.  
10 2000e–16b and 2000e–16c);

11 in the case of a claim alleged by such individual for  
12 a violation of such title, or of section 302(a)(1) of  
13 the Government Employee Rights Act of 1991 (42  
14 U.S.C. 2000e–16b(a)(1)), respectively;

15 (5) the President, the Commission, and the  
16 Merit Systems Protection Board shall have the same  
17 powers as the President, the Commission, and the  
18 Board, respectively, have to administer and enforce  
19 chapter 5 of title 3, United States Code, in the case  
20 of a claim alleged by such individual for a violation  
21 of section 411 of such title;

22 (6) a court of the United States shall have the  
23 same jurisdiction and powers as the court has to en-  
24 force—

1 (A) title VII of the Civil Rights Act of  
2 1964 (42 U.S.C. 2000e et seq.) in the case of  
3 a claim alleged by such individual for a viola-  
4 tion of such title;

5 (B) sections 302 and 304 of the Govern-  
6 ment Employee Rights Act of 1991 (42 U.S.C.  
7 2000e–16b and 2000e–16c) in the case of a  
8 claim alleged by such individual for a violation  
9 of section 302(a)(1) of such Act (42 U.S.C.  
10 2000e–16b(a)(1));

11 (C) the Congressional Accountability Act  
12 of 1995 (2 U.S.C. 1301 et seq.) in the case of  
13 a claim alleged by such individual for a viola-  
14 tion of section 201(a)(1) of such Act (2 U.S.C.  
15 1311(a)(1)); and

16 (D) chapter 5 of title 3, United States  
17 Code, in the case of a claim alleged by such in-  
18 dividual for a violation of section 411 of such  
19 title.

20 (b) PROCEDURES AND REMEDIES.—The procedures  
21 and remedies applicable to a claim alleged by an individual  
22 for a violation of this Act are—

23 (1) the procedures and remedies applicable for  
24 a violation of title VII of the Civil Rights Act of  
25 1964 (42 U.S.C. 2000e et seq.) in the case of a

1 claim alleged by such individual for a violation of  
2 such title;

3 (2) the procedures and remedies applicable for  
4 a violation of section 302(a)(1) of the Government  
5 Employee Rights Act of 1991 (2 U.S.C. 1202(a)(1))  
6 in the case of a claim alleged by such individual for  
7 a violation of such section;

8 (3) the procedures and remedies applicable for  
9 a violation of section 201(a)(1) of the Congressional  
10 Accountability Act of 1995 (2 U.S.C. 1311(a)(1)) in  
11 the case of a claim alleged by such individual for a  
12 violation of such section; and

13 (4) the procedures and remedies applicable for  
14 a violation of section 411 of title 3, United States  
15 Code, in the case of a claim alleged by such indi-  
16 vidual for a violation of such section.

17 (c) OTHER APPLICABLE PROVISIONS.—With respect  
18 to a claim alleged by a covered employee (as defined in  
19 section 101 of the Congressional Accountability Act of  
20 1995 (2 U.S.C. 1301)) for a violation of this Act, title  
21 III of the Congressional Accountability Act of 1995 (2  
22 U.S.C. 1381 et seq.) shall apply in the same manner as  
23 such title applies with respect to a claim alleged by such  
24 a covered employee for a violation of section 201(a)(1) of  
25 such Act (2 U.S.C. 1311(a)(1)).



1 **SEC. 10. STATE AND FEDERAL IMMUNITY.**

2 (a) STATE IMMUNITY.—A State shall not be immune  
3 under the 11th amendment to the Constitution from a suit  
4 described in subsection (b) and brought in a Federal court  
5 of competent jurisdiction for a violation of this Act.

6 (b) REMEDIES FOR STATE EMPLOYEES.—

7 (1) IN GENERAL.—

8 (A) WAIVER.—A State’s receipt or use of  
9 Federal financial assistance for any program or  
10 activity of a State shall constitute a waiver of  
11 sovereign immunity, under the 11th amendment  
12 to the Constitution or otherwise, to a suit  
13 brought by an employee or applicant for em-  
14 ployment of that program or activity under this  
15 Act for a remedy authorized under subsection  
16 (c).

17 (B) DEFINITION.—In this paragraph, the  
18 term “program or activity” has the meaning  
19 given the term in section 606 of the Civil  
20 Rights Act of 1964 (42 U.S.C. 2000d–4a).

21 (2) OFFICIALS.—An official of a State may be  
22 sued in the official capacity of the official by any  
23 employee or applicant for employment who has com-  
24 plied with the applicable procedures of section 10,  
25 for equitable relief that is authorized under this Act.  
26 In such a suit the court may award to the prevailing

1 party those costs authorized by section 722 of the  
2 Revised Statutes of the United States (42 U.S.C.  
3 1988).

4 (3) EFFECTIVE DATE.—With respect to a par-  
5 ticular program or activity, paragraphs (1) and (2)  
6 apply to conduct occurring on or after the day, after  
7 the date of enactment of this Act, on which a State  
8 first receives or uses Federal financial assistance for  
9 that program or activity.

10 (c) REMEDIES AGAINST THE UNITED STATES AND  
11 THE STATES.—Notwithstanding any other provision of  
12 this Act, in an action or administrative proceeding against  
13 the United States or a State for a violation of this Act,  
14 remedies (including remedies at law and in equity, and  
15 interest) are available for the violation to the same extent  
16 as the remedies are available for a violation of title VII  
17 of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.)  
18 by a private entity, except that—

19 (1) punitive damages are not available; and

20 (2) compensatory damages are available to the  
21 extent specified in section 1977A(b) of the Revised  
22 Statutes (42 U.S.C. 1981a(b)).

23 **SEC. 11. ATTORNEYS' FEES.**

24 Notwithstanding any other provision of this Act, in  
25 an action or administrative proceeding for a violation of

1 this Act, an entity described in section 10(a) (other than  
2 paragraph (4) of such section), in the discretion of the  
3 entity, may allow the prevailing party, other than the  
4 Commission or the United States, a reasonable attorney's  
5 fee (including expert fees) as part of the costs. The Com-  
6 mission and the United States shall be liable for the costs  
7 to the same extent as a private person.

8 **SEC. 12. POSTING NOTICES.**

9       A covered entity who is required to post notices de-  
10 scribed in section 711 of the Civil Rights Act of 1964 (42  
11 U.S.C. 2000e–10) shall post notices for employees, appli-  
12 cants for employment, and members, to whom the provi-  
13 sions specified in section 10(b) apply, that describe the  
14 applicable provisions of this Act in the manner prescribed  
15 by, and subject to the penalty provided under, section 711  
16 of the Civil Rights Act of 1964.

17 **SEC. 13. REGULATIONS.**

18       (a) IN GENERAL.—Except as provided in subsections  
19 (b), (c), and (d), the Commission shall have authority to  
20 issue regulations to carry out this Act.

21       (b) LIBRARIAN OF CONGRESS.—The Librarian of  
22 Congress shall have authority to issue regulations to carry  
23 out this Act with respect to employees and applicants for  
24 employment of the Library of Congress.

1       (c) BOARD.—The Board referred to in section  
2 10(a)(3) shall have authority to issue regulations to carry  
3 out this Act, in accordance with section 304 of the Con-  
4 gressional Accountability Act of 1995 (2 U.S.C. 1384),  
5 with respect to covered employees, as defined in section  
6 101 of such Act (2 U.S.C. 1301).

7       (d) PRESIDENT.—The President shall have authority  
8 to issue regulations to carry out this Act with respect to  
9 covered employees, as defined in section 411(c) of title 3,  
10 United States Code.

11 **SEC. 14. RELATIONSHIP TO OTHER LAWS.**

12       This Act shall not invalidate or limit the rights, rem-  
13 edies, or procedures available to an individual claiming  
14 discrimination prohibited under any other Federal law or  
15 regulation or any law or regulation of a State or political  
16 subdivision of a State.

17 **SEC. 15. SEVERABILITY.**

18       If any provision of this Act, or the application of the  
19 provision to any person or circumstance, is held to be in-  
20 valid, the remainder of this Act and the application of the  
21 provision to any other person or circumstances shall not  
22 be affected by the invalidity.

1 **SEC. 16. EFFECTIVE DATE.**

2       This Act shall take effect 6 months after the date  
3 of the enactment of this Act and shall not apply to conduct  
4 occurring before the effective date.

